IN THE HIGH COURT OF BOMBAY AT GOA

SECOND APPEAL NO. 86 OF 2000

Shri Octaviano Teogono
Alcacoas, residing near
Railway Station, Cansaulim,
Goa. ... Appellant

versus

Smt. Rosa Milagrina A.
Esmeana Morais, aged
about 44 years, housewife,
residing in House No.23/31,
Pale-Velsao,
Cansaulim, Goa. ... Respondent

Mr. V. Menezes, Advocate for the Appellant.

Mr. V. B. Nadkarni, Senior Advocate with Mr. T. Fernandes, Advocate for the Respondent.

CORAM : N. A. BRITTO, J.

DATE **:**30TH SEPTEMBER,2004 &
1ST OCTOBER, 2004.

ORAL JUDGMENT

This is Defendant's second appeal, arising from Special Civil Suit No.63 of 1987.

2. This second appeal was admitted on a substantial question of law which reads as follows:-

> "Whether the District Court lacked jurisdiction to pass the impugned Judgment, in view of Article 317 of the Portuguese Civil Procedure Code"?

3. Some facts are required to be stated to dispose off this appeal.

4. The Plaintiff and the Defendant in the said Civil Suit were husband and wife, having married on or about 20th January, 1975. The Plaintiff-wife filed the said suit for dissolution of their marriage under Article 4(4) of the Law of Divorce(Decree dated 3rd November,1910) and by virtue of subsequent amendment got another ground of divorce incorporated, under Article 4(5) of the said Law of Divorce.

5. The said Civil Suit came to be dismissed by Judgment/Decree dated 31st August, 1998 of the learned Civil Judge, Senior Division, Vasco-da-Gama.

6. The Plaintiff is stated to have filed an appeal before this Court and then withdrew the same and filed before the District Court,

Margao. After the said appeal was filed, being Regular Civil Appeal No. 128 of 1999, the same came to be allowed by the learned Additional District Judge, Margao, by his Judgment/Decree dated 25th April, 2000, as a result of which the marriage between the Plaintiff and the Defendant was ordered to be dissolved and the registration of their marriage cancelled.

7. The controversy before this Court centers around Article 317 of the (Portuguese) Civil Procedure Code, 1939(Code, for short) which reads as follows:-

Article 317. As accoes sobre o estado de pessoas ou sobre interesses imateriais consideram se sempre de valor equivalente a alcada das Relacoes e mais 1 $.	In the suit in respect of status of a person or in respect of non material interest, the value is always considered equivalent to the pecuniary jurisdiction of "Relacao" plus 1 $(one escudo).

8. The Plaintiff at the time of filing the said Civil Suit had stated in para 12 of the plaint "that for the purpose of jurisdiction, the suit was valued at Rs. 25,000/-. However, the relief being incompetent of monetary valuation, necessary Court fee has been paid". In other words, the Plaintiff valued the suit for the purpose of jurisdiction to be entertained by the learned Civil Judge, Senior Division, Vasco-da-Gama.

9. Mr. V. Menezes, learned Counsel of the Appellant/Defendant has submitted that the learned Additional District Judge had no jurisdiction to entertain and decide the said appeal filed before him as the suit was valued in terms of Article 317 of the Code, and the appeal could have been entertained and decided only by this Court in view of what has been stated in the said Article 317 of the Code. It is the submission of Mr. Menezes, learned Counsel that the said provision of Article 317 of the Code is still on the statute book and has not been repealed, as there is no corresponding provision in the Goa, Daman and Diu Suits Valuation Act, 1965. Mr. Menezes, has also relied upon certain decisions, to which I will make a reference a little later.

10. On the other hand, Mr. V. B. Nadkarni, learned Senior Counsel of the Respondent/Plaintiff has submitted that after the Goa, Daman and Diu Civil Courts Act, 1965 came into force on or about 15th October, 1965, the forum of appeal, being a matter of procedure would be governed by Section 6 of the said Goa, Daman and Diu Civil Courts Act, 1965 which provides that save as otherwise expressly provided the District Court shall be the Court of Appeal from all decrees and orders passed by the subordinate Courts from which an appeal lies under any law for the time being in force. Mr. Nadkarni, learned Senior Counsel has also referred to Section 22 of the Goa,

Daman and Diu Civil Courts Act, 1965 and submitted that as a matter of rule all appeals lie to the District Court and only by way of exception those appeals in which the amount of value of subject matter exceeds then Rs.25,000/- (and now Rs.1,00,000/-) lie to the High Court.

11. Mr. Nadkarni, has also referred to the provision of Section 5 of the Goa, Daman and Diu Suits Valuation Act, 1965 which provides that the Court fee value and jurisdictional value to be the same in certain suits, and it is his submission that in the case at hand, since the relief of divorce sought by the Plaintiff was incapable of monetary valuation it had to be valued giving the same value as for the purpose of jurisdiction as well. Mr. Nadkarni, has submitted that by virtue of Section 9 of the Goa, Daman and Diu Suits Valuation Act, 1965, the provision of Article 317 of the Code, which Article is found in Part II of Chapter 3 dealing with valuation of suits, would stand repealed. Mr. Nadkarni, has also placed reliance on some decided cases to which also I will refer to next.

12. Mr. Menezes, has referred to the case of **Paras Ram** v. **Janki Bai**(AIR 1961 All 395) and to the case of **Garikapatti Veerayya** v. **N. Subbiah Choudhury**(AIR 1957 SC 540).

13. In my view, and as rightly pointed out by Mr. Nadkarni, the case of **Paras Ram** v. **Janki Bai**(supra) has been best explained

in a subsequent decision of a Division Bench of the same Court in the case of **Smt. Priya and others** v. **Shiv Shankar.** Referring to the first case of **Paras Ram** v. **Janki Bai**(supra), the Division Bench in the case of **Smt. Priya and others** v. **Shiv Shankar(supra)** observed that the valuation put down by the Appellants is of no consequence at all as held by a Full Bench in **Paras Ram** v. **Janki Bai.** It is the valuation of the suit that governs the question of forum of appeal and not the valuation arbitrarily placed on the memorandum of appeal. If the valuation of the suit does not exceed Rs.10,000/- an appeal from a decree passed in it will lie to the District Judge, otherwise it will lie to the High Court. In the Full Bench case, no valuation was put down on the plaint at all and it could not be said to be in excess of Rs.10,000/- and consequently the appeal lay to the High Court. On facts, as rightly submitted by Mr. Nadkarni, the decision of the Full Bench of the Allahabad High Court in the case of **Paras Ram** v. **Janki Bai**(supra) would be of no assistance to the case of the Appellant/Defendant.

14. The second case of **Garikapatti Veerayya** v. **N. Subbiah Choudhury**(supra) was a case which dealt with forum of appeal after the Federal Court ceased to exist and the Hon'ble Supreme Court observed that from the decisions cited before it the following principles clearly emerged:-

i). that the legal pursuit of a remedy, suit, appeal and second appeal are really but steps in a series of proceedings all connected by an intrinsic unity and are to be regarded as one legal proceeding.

ii). The right of appeal is not a mere matter of procedure but is a substantive right.

iii). The institution of the suit carries with it the implication that all rights of appeal then in force are preserved to the parties thereto till the rest of the career of the suit.

iv) The right of appeal is a vested right and such a right to enter the superior court accrues to the litigant and exists as on and from the date of lis commences and although it may be actually exercised when the adverse Judgment is pronounced such right is to be governed by the law prevailing at the date of the institution of the suit or proceeding and not by the law that prevails at the date of its decision or at the date of the filing of the appeal.

v). This vested right of appeal can be taken away only by a subsequent enactment, if it so provides expressly or by necessary intendment and not otherwise.

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15. In the case of **Maria Christine De Souza Soddar and others** v. **Maria Zurna Pereira Pinto and others**(AIR 1979 SC 1352) the Supreme Court has clearly laid down two principles namely that the right of appeal is a substantive right and it gets vested in a litigation no sooner the lis is commenced in the Court of the first instance and that the forum where such appeal can be lodged is indubitably a procedural matter.

16. In the case of **Shri Agnelo Rasquinha** v. **Smt. Maria Cynthia Luiza De Piedade Colaco Rasquinha**(1989 GLT(28)) this Court referring to the case of **Maria Christine De Souza Soddar and others** v. **Maria Zurna Pereira Pinto and others** (supra) held that an appeal must lie on a combined reading of the Code of Civil Procedure, 1908 with the relevant provisions of the Goa, Daman and Diu Civil Courts Act, 1965 either to the District Court or the High Court depending upon the pecuniary valuation of the subject matter of the suits. Any suits below Rs.25,000/- in valuation appeals against orders and decrees lies to the District Court and above to the High Court.

17. Firstly, it must be stated that the Defendant did not raise any objection to the jurisdiction of the District Court at the time of

hearing the said appeal and submitted to its jurisdiction until the decision went against the Defendant.

18. In this context, Mr. Nadkarni, learned Senior Counsel has referred to sub-section 2 of Section 21 of Civil Procedure Code, 1908. Section 21 deals with objections to jurisdiction. Sub-Section 2 of Section 21 provides that no objection as to the competence of a Court with reference to the pecuniary limits of its jurisdiction shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of law and, in all cases where issues are settled, on or before such settlement, and unless there has been a consequent failure of justice. Mr. Nadkarni, learned Senior Counsel has also placed reliance on a Judgment of this Court in the case of **Makhanlal Lolaram and others** v. **Pancham Lal Sheoprasad**(AIR 1933 Nagpur 318) wherein this Court held that although Section 21, Civil Procedure Code did not in terms apply to appeals, the principle underlying it was of general application so as to cover proceedings other than original suits. Hence where an objection as to jurisdiction was not taken in the lower appellate Court, the plea must have been waived and cannot be raised in second appeal. The Supreme Court in the case of **M/s Tikaram and Sons Ltd.** v. **The Commissioner of Sales Tax, U.P.**(AIR 1968 SC 1286) has stated that once a party submits to the jurisdiction and takes the chance of Judgment in its favour, it is not right for the party then to take exception to the jurisdiction of the High Court when the Judgment goes against it. The

observations of the Apex Court are found in para 7 of the Judgment and they read as follows:

> “The reason is that the Appellants did not challenge the jurisdiction of the High Court to examine the question of law regarding the constitutional validity of Explanation II to Section 2(h) of the Act. Nor was any such challenge made in the Special Leave Petition to this Court or in the statement of the case. On the contrary, the Appellant has itself applied to the Judge. Revisions under Section 10 of the Act contending the Explanation II to Section 2(h) was ultra vires. It is, not therefore, open to the Appellants to deny the jurisdiction of the Revisional Authority to decide the question or to challenge the jurisdiction of the High Court to examine the question of law referred to it under Section 11 of the Act and to pronounce upon the constitutional validity of the impugned section. In other words, it must be taken that the Appellants had voluntarily submitted to the jurisdiction of the Revisional Authority and of the High Court on the matter in issue and having submitted to the jurisdiction and having taken the chance of Judgment in its favour, it is not right that the Appellants should take exception to the jurisdiction of the High Court when the Judgment has gone against it. The Apex Court, therefore, concluded by observing that the Appellants could not be permitted to canvass for the first time the question whether it was competent for the High Court to

> decide the question of law referred to it under Section 11 of the Act."

19. The Defendant, as already stated having taken no objection before the District Court and having submitted to its jurisdiction is now precluded to urge before this Court that the District Court had no jurisdiction to entertain the said appeal. On this count alone the appeal must fail.

20. Secondly, the provision of Article 317 of the Code seems to be a provision governing valuation of suits for purposes of pecuniary jurisdiction. As the learned author Professor Alberto Luis Reis says, the said provision deals with suits regarding status of persons(suits for divorce, separation of persons and properties, annulment of marriages ... etc.) and suits subject matter of which has no pecuniary value. The learned author further says that the said provision was enacted so that the parties had a benefit of having an advantage of an appeal to Supreme Court of Justice; so that the parties may have the benefit of ordinary procedure(as against a summary procedure); and so that the parties have the benefit of the cases being decided by the Comarca Court (which now corresponds to the Court of Civil Judge, Senior Division).

21. Admittedly, the suit was filed after the enforcement of the

Goa, Daman and Diu Civil Courts Act, 1965 and the Goa, Daman and Diu Suits Valuation Act, 1965. As already seen, we now have, by virtue of Section 20 of the said Civil Courts Act, 1965, two classes of Civil Judges, namely, Senior Civil Judges and Junior Civil Judges. By virtue of Section 22 of the said Civil Courts Act, 1965, appeals from all suits decided by Civil Judges of which the amount of valuation of the subject matter exceeds Rs.1,00,000/-(then Rs.25,000/-), lies to the High Court. Section 5 of the Goa, Daman and Diu Suits Valuation Act, 1965 deals with Court fee value and jurisdictional value to be the same in certain suits. It provides that where in suits other than those referred to in the Court Fees Act, Section 7, paras V, VI and IX and para X, Clause (d), Court Fees are payable ad valorem under the Court Fees Act, the value as determinable for the computation of Court Fees and the value for purposes of jurisdiction shall be the same. Section 9 of the Goa, Daman and Diu Suits Valuation Act, 1965 deals with repeal and provides that as from the commencement of this Act, any law in force in the Union Territory of Goa, Daman and Diu or any part thereof, corresponding to this Act or such provisions thereof as have come into force shall stand repealed. Likewise, Section 34 of the Civil Courts Act, 1965, provides that as from the commencement of this Act, any law in force in the Union Territory making provisions for the constitution and organisation of Civil Courts or any part of such law, shall stand repealed.

22. I have concluded that the provision of Article 317 of the

Code is a provision which deals with valuation in relation to pecuniary jurisdiction of the Courts. Since the matter of valuation are now dealt by the Suits Valuation Act, 1965 and aspects of jurisdiction are dealt by the Civil Courts Act, 1965, after the enforcement of the said Acts in this State, the provisions of Article 317 being a corresponding provision relating to those matters stands repealed by the respective repealing provisions of the said Acts of 1965. In such a situation, the contention of Mr. Menezes that the said provision of Article 317 gave a party a definite forum of appeal cannot be accepted. It may also be stated that although the right of appeal is a substantive right, forum where appeal should be filed is a procedural matter and the said forum is now the District Court as provided by the Goa, Daman and Diu Civil Courts Act, 1965.

23. Consequently, the substantial question framed has got to be answered in the negative. In other words, the District Court was competent to entertain and decide the appeal. As a result, this second appeal fails and is, therefore, hereby dismissed with no order as to costs.

N. A. BRITTO, J.

RD.